

¹ Available at <http://ezt.net>.

the flat-rate local services provided by the incumbent local exchange carrier (“ILEC”) in a customer’s location. In Tennessee, the ILEC is BellSouth Telecommunications Inc. (“BellSouth”).

Tenn. Code Ann. § 65-4-125(a) and Tenn. Rules & Regs. 1220-4-2-.56 strictly prohibit slamming. Tenn. Code Ann. § 65-4-125(a) states:

- (a) No telecommunications service provider, and no person acting on behalf of any telecommunications provider, shall designate or change the provider of telecommunications services to a subscriber if the provider or person acting on behalf of the provider knows or reasonably should know that such provider or person does not have the authorization of such subscriber.

I. Travel of the Case

As part of EZ Talk’s initial application for permission to resell telecommunications services in the state of Tennessee, EZ Talk certified that it understood and agreed to comply with state law and the applicable rules and regulations of the Authority. Relying in part upon EZ Talk’s representation, the Authority approved EZ Talk’s application in Docket No. 98-00390 and ordered that EZ Talk comply with all applicable state laws and Authority rules and regulations.

At a regularly scheduled Authority Conference held on December 15, 2003, Director Pat Miller, Director Sara Kyle, and Director Ron Jones, the voting panel assigned to this docket, voted unanimously to appoint Director Pat Miller to act as Hearing Officer in this matter. The panel voted further to authorize the Hearing Officer, pursuant to Tenn. Code Ann. § 4-5-301 and 65-2-111, to determine whether to issue a show cause order, and, if a show cause order was issued, to render an initial decision on the merits of this case including, as necessary, findings of fact and conclusions of law.

² EZ Talk requires payment prior to the initiation of service. If a consumer fails to pay in advance for a given month’s service, that consumer will not receive service for that month.

The CSD conducted a preliminary investigation of EZ Talk that revealed that beginning in October of 2003 the Authority received approximately seventy-six (76) consumer complaints against another prepaid telephone service reseller, Delta Phones, Inc. ("Delta Phones").³ These complainants alleged that in September of 2003 their service provided by Delta Phones was terminated without notice.⁴

Delta Phones had been providing telephone service to Tennessee customers pursuant to a resale agreement with BellSouth.⁵ As a result of a billing dispute with Delta Phones, BellSouth filed a letter with the Authority on August 25, 2003 stating its intention to terminate Delta Phones' service on September 4, 2003.⁶

Through its preliminary investigation the CSD determined that subsequent to BellSouth's termination of Delta Phones' service, Delta Phones' former customers continued to receive telephone service.⁷ Delta Phones dealers informed the CSD during the investigation that the telephone service of former Delta Phones customers had been switched to EZ Talk.⁸

Thereafter the CSD subpoenaed BellSouth records for the period of time from December 1, 2002 through October 15, 2003, which showed that over a period of two days between July 8, and 10, 2003 the local telephone service of most Delta Phones customers was switched to

³ Delta Phones was a reseller of local exchange telecommunications services providing prepaid telephone service to Tennessee customers.

⁴ *Show Cause Order*, p. 18 (December 18, 2003) (*Affidavit of John Conners in Support of Allegations of Violations of Tenn. Code Ann. § 65-4-125 and Tenn. Rules & Regs. 1220-4-2-.56 Pursuant to a Proceeding Requiring EZ Talk Communications, LLC to Show Cause Why an Order Revoking Its Reseller Certificate and/or Imposing a Fine Should Not Issue*).

⁵ *See In Re: Petition for Approval of the Resale Agreement Between BellSouth and Delta Phones, Inc.*, Docket No. 02-01018, *Order Approving Resale Agreement*, p.2 (December 20, 2002).

⁶ *In Re: Delta Phones, Inc. Complaint and Petition for Expedited Relief*, Docket No. 03-00425, Letter from Guy M. Hicks, General Counsel to BellSouth Telecommunications, Inc. to Richard Collier, General Counsel to the Tennessee Regulatory Authority acting as Hearing Officer (August 25, 2003).

⁷ *Affidavit of John Conners in Support of Allegations of Violations of Tenn. Code Ann. § 64-4-125 and Tenn. Rules and Regs. 1220-4-2-.56 Pursuant to a Proceeding Requiring EZ Talk Communications, LLC to Show Cause Why an Order Revoking Its Reseller Certificate and/or Imposing a Fine Should Not Issue* (December 17, 2003). ("Affidavit of John Conners").

⁸ *Affidavit of John Conners* (December 17, 2003).

another provider.⁹ The CSD staff checked the list of Delta Phones customers who had been switched to another telephone service provider against the list of Delta Phones customers who had filed complaints with the TRA regarding termination of their telephone service and determined that thirty-six (36) of these complainants were switched from Delta Phones to EZ Talk.¹⁰ The CSD sent these complainants a letter that asked whether they had authorized the switching of their telephone service from Delta Phones to EZ Talk.¹¹ Twenty-seven (27) complainants responded,¹² and twenty-one (21) of them confirmed in written statements that they had not authorized the switch.¹³

The subpoenaed BellSouth records revealed that the requests to switch these twenty-one (21) complainants from Delta Phones to EZ Talk came from EZ Talk.¹⁴ Additional records produced by BellSouth showed the number of days each of the complainants had their local telephone service placed with EZ Talk without authorization.¹⁵

On December 18, 2003 based upon the preliminary investigation and resulting recommendation of the CSD, the Hearing Officer issued the *Order Requiring EZ Talk, LLC to Appear and Show Cause Why an Order Revoking Its Reseller Certificate and/or Imposing a Fine Should Not Issue* ("Show Cause Order"). The *Show Cause Order* contained twenty-one (21) specific counts alleging violations of Tenn. Code Ann. § 65-4-125(a) and Tenn. Rules & Regs. 1220-4-2-.56 as follows:

⁹ *Affidavit of John Conners* (December 17, 2003). The records produced by BellSouth showed that more than 2,000 customers were switched on July 8 and 9, 2003.

¹⁰ *Affidavit of John Conners* (December 17, 2003).

¹¹ *Affidavit of John Conners* (December 17, 2003).

¹² *Affidavit of John Conners* (December 17, 2003).

¹³ *Affidavit of John Conners* (December 17, 2003).

¹⁴ *Affidavit of Dr. Eddie Roberson in Support of Allegations of Violations of Tenn. Code Ann. § 64-4-125 and Tenn. Rules and Regs. 1220-4-2-.56 Pursuant to a Proceeding Requiring EZ Talk Communications, LLC to Show Cause Why an Order Revoking Its Reseller Certificate and/or Imposing a Fine Should Not Issue* (December 18, 2003) ("Affidavit of Dr. Eddie Roberson").

¹⁵ *Affidavit of Dr. Eddie Roberson* (December 18, 2003).

- (1) EZ Talk changed the provider of telecommunications services without the authorization of Sheryl Sanders and provided unauthorized telephone service to Sheryl Sanders for sixty-six (66) days.
- (2) EZ Talk changed the provider of telecommunications services without the authorization of Karen Hogan Schuelke and provided unauthorized telephone service to Karen Hogan Schuelke for ninety-nine (99) days.
- (3) EZ Talk changed the provider of telecommunications services without the authorization of James P. Morton and provided unauthorized telephone service to James P. Morton for sixty-six (66).
- (4) EZ Talk changed the provider of telecommunications services without the authorization of Miescha White and provided unauthorized telephone service to Miescha White for ninety-eight (98) days.
- (5) EZ Talk changed the provider of telecommunications services without the authorization of Linda Lentini and provided unauthorized telephone service to Linda Lentini for sixty-six (66) days.
- (6) EZ Talk changed the provider of telecommunications services without the authorization of Donna Counts and provided unauthorized telephone service to Donna Counts for ninety-one (91) days.
- (7) EZ Talk changed the provider of telecommunications services without the authorization of Ella Medley and provided unauthorized telephone service to Ella Medley for sixty-five (65) days.
- (8) EZ Talk changed the provider of telecommunications services without the authorization of Clayton Hadley and provided unauthorized telephone service to Clayton Hadley for sixty-six (66) days.
- (9) EZ Talk changed the provider of telecommunications services without the authorization of Eddie North and provided unauthorized telephone service to Eddie North for sixty-six (66) days.
- (10) EZ Talk changed the provider of telecommunications services without the authorization of Ronald W. Jenkins and provided unauthorized telephone service to Ronald W. Jenkins for ninety-four (94) days.
- (11) EZ Talk changed the provider of telecommunications services without the authorization of Carolyn Burk and provided unauthorized telephone service to Carolyn Burk for ninety-one (91) days.

(12) EZ Talk changed the provider of telecommunications services without the authorization of Lakeysha Carter and provided unauthorized telephone service to Lakeysha Carter for one hundred and one (101) days.

(13) EZ Talk changed the provider of telecommunications services without the authorization of Sandra Crews and provided unauthorized telephone service to Sandra Crews for sixty-five (65) days.

(14) EZ Talk changed the provider of telecommunications services without the authorization of Cathy Luke and provided unauthorized telephone service to Cathy Luke for ninety-eight (98) days.

(15) EZ Talk changed the provider of telecommunications services without the authorization of Sally Peery and provided unauthorized telephone service to Sally Peery for ninety (90) days.

(16) EZ Talk changed the provider of telecommunications services without the authorization of Debbie Sanders and provided unauthorized telephone service to Debbie Sanders for one hundred and two (102) days.

(17) EZ Talk changed the provider of telecommunications services without the authorization of Buford Scott, Jr. and provided unauthorized telephone service to Buford Scott, Jr. for sixty-five (65) days.

(18) EZ Talk changed the provider of telecommunications services without the authorization of Lisa Kay Travis and provided unauthorized telephone service to Lisa Kay Travis for sixty-six (66) days.

(19) EZ Talk changed the provider of telecommunications services without the authorization of Ronnie Wilson and provided unauthorized telephone service to Ronnie Wilson for sixty-six (66) days.

(20) EZ Talk changed the provider of telecommunications services without the authorization of Nakiya Lacy and provided unauthorized telephone service to Nakiya Lacy for ninety (90) days.

(21) EZ Talk changed the provider of telecommunications services without the authorization of Denvy L. Cook and provided unauthorized telephone service to Denvy L. Cook for sixty-six (66) days.

The *Show Cause Order* directed EZ Talk to appear before the Hearing Officer on Wednesday, January 7, 2004 at 10:00 a.m. in the Hearing Room on the Ground Floor at 460 James Robertson Parkway, Nashville, TN and show cause why the Authority should not issue an

order revoking EZ Talk's reseller certificate and imposing civil penalties pursuant to Tenn. Code Ann. § 65-4-125(f) and take other lawful action for the unlawful actions of EZ Talk as set forth in the *Show Cause Order*. EZ Talk filed no response to the *Show Cause Order*.

II. The Hearing

A hearing on the merits was held in this matter on January 7, 2003 before the Hearing Officer. Staff attorney Jean Stone appeared on behalf of the CSD. General Counsel Richard Collier appeared for the TRA. No one appeared on behalf of EZ Talk.

As preliminary matter Mr. Collier outlined the procedures used to provide notice of the Hearing to EZ Talk. Mr. Collier stated that on December 18, 2003 notice of the Hearing was sent via facsimile to the registered agent for EZ Talk and to a number that had recently been provided to TRA Staff by an EZ Talk representative. Mr. Collier stated further that he had spoken telephonically with an EZ Talk representative on January 5, 2004 and that during the conversation the EZ Talk representative acknowledged receipt of the *Show Cause Order* and that the EZ Talk representative was aware that proceedings in this matter were scheduled for January 7, 2004.¹⁶

During the Hearing Mr. John Connors, CSD Investigator, testified that his Division investigated the seventy-six (76) complaints against Delta Phones noted above.¹⁷ According to Mr. Connors, none of these complaints made reference to EZ Talk.¹⁸ Mr. Connors testified further that in the course of his investigation into these complaints he received the sworn statement of a Delta Phones dealer, Mr. Paul Crews, in which Mr. Crews stated that after certain Delta Phones customers reported to him that their service had been terminated without notice, and upon his contacting BellSouth for an explanation, he was informed by BellSouth that the

¹⁶ Transcript of Proceedings, pp. 3-6.

¹⁷ Transcript of Proceedings, p. 9.

service in question was being provided by EZ Talk.¹⁹ Mr. Conners also testified that he received a copy of a memorandum distributed to various Delta Phones dealers by Delta Phones. The document stated that all of their accounts had been converted to EZ Talk.²⁰ Mr. Conners also testified that he received copies of correspondence from a Delta Phones dealer, Ms. Kandy Littrell. Ms. Littrell had received the correspondence from a Delta Phones staff person, Ms. Chiara Nash.²¹ In the correspondence Ms. Nash made the statement that all of the accounts associated with Ms. Littrell had been converted to EZ Talk.²² Ms. Nash stated further that she would fax two forms used to obtain customers' authorization to switch their service to EZ Talk to Ms. Littrell and asked Ms. Litrell to obtain her customers signatures on the forms.²³ Ms. Nash also stated in the correspondence that "this is something we should have done when we converted the customers to EZ Talk."²⁴

Mr. Conners next testified that the CSD obtained BellSouth records of Delta Phones' customers and compared them with the seventy-six (76) complaints previously received from Delta Phones customers and, based on these comparisons, determined that thirty-six (36) of these customers had been switched from Delta Phones to EZ Talk.²⁵ Mr. Conners testified that the CSD sent these thirty-six (36) customers a letter requesting that they advise the CSD whether they had authorized EZ Talk to switch their service from Delta Phones to EZ Talk.²⁶ Mr. Conners

¹⁸ Transcript of Proceedings, p. 9.

¹⁹ Transcript of Proceedings, p. 11.

²⁰ Transcript of Proceedings, p. 13.

²¹ Transcript of Proceedings, pp. 12.

²² Transcript of Proceedings, p. 14.

²³ Transcript of Proceedings, p. 14.

²⁴ Transcript of the Proceedings, p. 14. A copy of the correspondence from Ms. Nash to Ms. Littrell was admitted into evidence as Exhibit 3.

²⁵ Transcript of the Proceedings, p. 15.

²⁶ Transcript of Proceedings, p. 15.

testified that twenty-one (21) of these customers responded to the letter with statements that they had not authorized EZ Talk to switch their service from Delta Phones to EZ Talk.²⁷

Dr. Eddie Roberson, Chief of the CSD, also testified at the Hearing. During his testimony Dr. Roberson provided a copy of a letter dated August, 25, 2003 from BellSouth's General Counsel to the TRA's General Counsel stating BellSouth's intent to terminate Delta Phones' service on September 4, 2003.²⁸ Dr. Roberson testified further that after receiving notice that Delta Phones' service was to be terminated on September 4, 2003; and after receiving numerous complaints against Delta Phones for unannounced termination of service approximately one month after the termination of Delta Phones' service, the CSD had cause to believe that Delta Phones' customers were receiving telephone service from some other provider subsequent to BellSouth's termination of Delta Phones' service.²⁹ Dr. Roberson testified that, based on the statements of the twenty-one (21) Delta Phones customers who affirmed that they had not authorized EZ Talk to switch their service, the CSD obtained additional BellSouth records to determine the exact number of days each was provided unauthorized service by EZ Talk.³⁰ Dr. Roberson thereafter recounted the number of days BellSouth's records showed each customer received unauthorized service from EZ Talk—the number of days Dr. Roberson described for each of the twenty-one (21) customers was consistent with the number of days reflected for each customer in the twenty-one (21) counts listed in the *Show Cause Order*.³¹

²⁷ Transcript of the Proceedings, pp. 15-18. Copies of these twenty-one (21) statements were admitted into evidence as Exhibit 4.

²⁸ Transcript of Proceedings, p. 21. A copy of the letter was admitted into evidence as Exhibit 5.

²⁹ Transcript of Proceedings, p. 22-23.

³⁰ Transcript of Proceedings, pp. 27-29.

³¹ Transcript of Proceedings, pp. 29-30.

At the close of their presentation the CSD requested revocation of EZ Talk's reseller certificate and for monetary fines for the violations of the laws of Tennessee and the rules and regulations of the Authority as alleged in the *Show Cause Order*.

At the close of the Hearing the Hearing Officer found that notice of the Hearing was properly effectuated and actually received by EZ Talk. The Hearing Officer also found that EZ Talk had the burden of proof to show cause why they should not be found in violation of Tenn. Code Ann. § 65-4-125 and TRA Rule 1220-4-2-.56 regarding slamming and that through their absence had failed to meet that burden. The Hearing Officer found further that EZ Talk was in violation of Tenn. Code Ann. § 65-4-125 and TRA Rule 1220-4-2-.56 with regard to all counts alleged in the *Show Cause Order*. The Hearing Officer also addressed the issue of fines or penalties that might be assessed by the Authority and took those matters under advisement and admitted into evidence all consumer complaints referenced in the *Show Cause Order*.

Findings of Fact and Conclusions of Law

Under Tenn. Code Ann. § 65-2-106, the Authority is specifically empowered to issue a show cause order requiring persons under its jurisdiction to appear before it and demonstrate why the Authority should not take such action as set forth in the show cause order. Tenn. Code Ann. § 65-2-109(5) provides: "that when the authority has issued a show cause order pursuant to the provisions of this chapter, the burden of proof shall be on the parties thus directed to show cause." In this proceeding, the Authority, in compliance with Tenn. Code Ann. § 65-2-106, issued a show cause order against EZ Talk that set forth fully and specifically the grounds for the order and provided EZ Talk an opportunity to fully reply to that order. In accordance with Tenn. Code Ann. § 65-2-109, the burden of proof in this matter is on EZ Talk.

The *Show Cause Order* set forth allegations of fact that, absent rebuttal, constitute violations of Authority Rules and Regulations and state law. These facts presented the issue of whether EZ Talk violated Tenn. Rules & Regs. 1220-4-2-.56 and Tenn. Code Ann. § 65-4-125 by designating or changing the provider of telecommunications services to subscribers where EZ Talk knew or reasonably should have known that EZ Talk did not have the authorization of the subscribers to do so.

The evidence introduced in this matter demonstrates that the consumers in question did not actually request a change in service provider prior to having their service provider being designated or changed to EZ Talk. Thus, the Hearing Officer finds that the twenty-one (21) complainants identified in the *Show Cause Order* did not authorize or request EZ Talk to change their service. The Hearing Officer finds further that the testimony shows that EZ Talk either did not seek the consumers' authorization or that EZ Talk knew or reasonably should have known that it did not have consumers' authorization to change their service.

The Hearing Officer concludes from the evidentiary record that EZ Talk failed to comply with Tenn. Code Ann. § 65-4-125 and Tenn. Rules & Regs. 1220-4-2-.56 on the ground that in all instances put forth in the *Show Cause Order* EZ Talk did not obtain authorization to change the telephone service provider for each subscriber in question from Delta Phones to EZ Talk and knew or reasonably should have known that it did not have such authorization.

EZ Talk was clearly on notice of the complaints that were the subject of the *Show Cause Order* well in advance of the Hearing and, during the course of this proceeding, was provided ample opportunity to present its case before the Authority concerning those complaints. The Hearing Officer finds that the evidentiary record unequivocally demonstrates that EZ Talk has repeatedly violated Authority rules and regulations and Tennessee law.

For the foregoing reasons and based on the record as a whole, the Hearing Officer concludes that EZ Talk stands in repeated violation of Authority rules and state law. The substantial weight of the evidence demonstrates that EZ Talk has engaged in a pattern of misconduct, including slamming, that is unacceptable in Tennessee. EZ Talk has failed to come forward and present evidence to contradict the allegations set forth in the *Show Cause Order* or to otherwise support its cause herein. The CSD has clearly and convincingly demonstrated that the record supports the facts alleged against EZ Talk.

Sanctions

Tenn. Code Ann. § 65-4-125(f) provides that telecommunications service providers who violate the slamming statutes shall be subject to a civil penalty of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000) for each day of any such violation. The twenty-one (21) counts listed above show that EZ Talk was in violation of Tenn. Code Ann. § 65-4-125 for a total of one thousand six hundred and seventy-seven (1,677) days. Therefore EZ Talk is subject to a civil penalties ranging from one hundred sixty-seven thousand seven hundred dollars (\$167,700.00) to one million six hundred seventy-seven thousand dollars (\$1,677,000.00). Based on the Hearing Officer's review of the evidence in this matter the Hearing Officer finds that one million six hundred seventy-seven thousand dollars (\$1,677,000.00) shall be imposed as a monetary sanction for the violations listed in the *Show Cause Order*.

The Hearing Officer finds that the evidentiary record supports the revocation of EZ Talk's certification as a reseller of telecommunications services in the State of Tennessee.

Further, the Hearing Officer determines that EZ Talk, its agents, representatives, employees, owners, assigns, subsidiaries or other related companies are forbidden, directly or indirectly,

under its current name or another name shall immediately cease to solicit any new customers in the State of Tennessee.

Finally, the Staff of the Tennessee Regulatory Authority should be directed to advise all telecommunications services providers of the revocation of EZ Talk's certificate, so as to protect the public interest. In this regard, a Notice of Revocation of Certification of EZ Talk Communications, LLC should issue as soon as practicable.

IT IS THEREFORE ORDERED THAT:

1. Based upon the record in this proceeding, EZ Talk, LLC is in violation of Tenn. Comp. Rules & Regs. 1220-4-2-.56 and Tenn. Code Ann. § 65-4-125.

2. As a result of the violations set forth in this Order, the Certification as a reseller of telecommunications services granted to EZ Talk Communications, LLC by Order of the Tennessee Regulatory Authority entered in Docket No. 98-00390 is hereby revoked.

3. As a result of the revocation of its Certification, EZ Talk Communications, LLC and its agents, representatives, employees, owners, assigns, subsidiaries or other related companies are prohibited, directly or indirectly, under its current name or another name, from soliciting any new customers in the State of Tennessee.

4. The Staff of the Tennessee Regulatory Authority is authorized to advise all telecommunications services providers of the revocation of EZ Talk's certificate, as necessary to protect the public interest.

5. Monetary sanctions are hereby imposed in the amount of one million six hundred seventy-seven thousand dollars (\$1,677,000.00) against EZ Talk Communications, LLC for the violations set forth in this Order.

6. This Order shall take effect on the date of the entry of this Order.

7. Any party aggrieved by this initial decision may file a Petition for Reconsideration with the Tennessee Regulatory Authority within fifteen (15) days from and after the date of this Order. Such petition shall be considered by the Hearing Officer presiding herein.

8. Any party aggrieved by the decision of the Hearing Officer in this matter may also file a Petition for Appeal pursuant to Tenn. Code Ann. § 4-5-315 with the Tennessee Regulatory Authority within fifteen (15) days from and after the date of this Order. If the Tennessee Regulatory Authority or any of the parties herein do not seek review of this Initial Order within the time prescribed by Tenn. Code Ann. § 4-5-315, this Order shall become the Final Order.

9. Any party aggrieved by the Authority's Final Order in this matter has the right to judicial review by filing a Petition for Review in the Middle Section of the Court of Appeals of Tennessee within sixty (60) days from the date of the Final Order.

10. Any time for the filing of a Petition for Review, Appeal, or Reconsideration of this Order shall commence to run from the date of the entry of this Order.



Pat Miller, Director
as Hearing Officer

1-12-04

Date of Entry